

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session
Friday, November 5, 1999

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:45 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners William Deaver and Carol Scott were present.

Item #1. Approval of the Minutes of the October 8, 1999, Commission Meeting.

The minutes of the October 8, 1999, Commission meeting were distributed to the Commission and made available to the public. Chairman Getman made a motion to accept the minutes as presented. Commissioner Scott seconded the motion. There being no opposition, the motion carried.

Item #2. Public Comment.

There was no public comment.

Items #3, 4, and 5.

Commissioner Deaver moved to approved on consent the stipulations and recommended fines as follows:

- Item #3. In the Matter of Scott Dowds, FPPC No. 99/461 (\$250.00);**
- Item #4. In the Matter of Ann Cornelius, FPPC No. 99/435 (\$500.00);**
- Item #5. In the Matter of Cecilia Larios, Larios For City Council, and Javier Murillo, FPPC No. 98/115 (\$500.00).**

Chairman Getman seconded the motion. There being no opposition, the motion carried.

Item #6. In the Matter of Karl E. Gaytan, Committee to Re-Elect Karl E. Gaytan for Mayor, and Frank A. Ibarra, FPPC 99/198.

Enforcement Counsel Deborah Bain presented this three count stipulation with a recommended fine of \$1,000. She explained that Respondent Karl E. Gaytan was a successful candidate for Mayor of Colton, California. Respondent Committee to Re-Elect Karl E. Gaytan was his controlled committee. Respondent Frank A. Ibarra was the committee's treasurer. Respondents failed to file one Pre-Election Statement, in violation of Government Code sections 84200.5 and

84200.7, and failed to file two Semi-Annual Campaign Statements, in violation of Government Code section 84200, subdivision (a).

Ms. Bain explained that FPPC Investigator Bill Motmans contacted the respondents Mr. Gaytan and Mr. Ibarra and requested that they file their statements. Five days later they did file the pre-election statement and the requisite semi-annual statement. Subsequently, they filed a second semi-annual statement eight days late.

Ms Bain noted that the \$1,000 fine was recommended because both respondents suffered from severe family hardships during this period of time. Furthermore Mr. Gaytan paid a late filing fee of \$1,980, for the late filing in count one. Counts two and three involved semi-annual reports due after the elections and Mr. Gaytan paid late filing fees of \$970.00, and \$80.00 respectively. She went on to explain that normally count number three would not have been charged, but that because it had indicated a pattern, it was charged in this case.

Chairman Getman moved that the stipulation be approved. Commissioner Deaver seconded the motion. The motion passed unanimously.

Item #7. Adoption of the Regulation Calendar For The Year 2000.

Legal Counsel John Vergelli presented the proposed regulation calendar, with changes included that were requested by the Commission at the October 1999 meeting.

Mr. Vergelli explained that staff had tried to be as specific as possible, but that at this early stage of the process, the boundaries were not airtight and that there would probably be scope changes as the projects move along. He added that numbering the projects would be a good idea.

Chairman Getman noted that at the first meeting in December staff would discuss the general overview of the project. Mr. Vergelli agreed, but noted that some technical work would be done in November in order to be able to complete the project in one year. All of that work will be preliminary in nature and will accommodate any decisions made during the December meeting. He added that the calendar included pre-notice and notice discussions for each regulatory change.

Assistant General Counsel Luisa Menchaca added that staff is exploring different ways to make clear the eight step process so that everyone understands what aspect of the Conflict of Interest process is being addressed. She explained that there is a working plan with attorneys assigned to each of the regulations and that they will have that available to the regulated community. Ms. Menchaca noted that a policy memorandum will be developed at the beginning and at the end of the process, and that they will be looking at the substantive issues and ways to write it in "simple English."

Chairman Getman encouraged the members of the public to provide their input at the December meeting. She requested that staff develop a chart that will show the steps.

Mr. Vergelli explained that two methods were being studied for teaching the conflicts regulations, and communicating about the project as it moves along. The first would involve use of the web site, and he hoped to have a demo of that available at the December meeting. A workbook is going to be prepared for the December meeting, which should make easier the process of working on the project. Chairman Getman noted that the public would find the workbook helpful too.

Commissioner Scott requested that staff emphasize that public input is welcome, and that the writing be done in clear, understandable English.

Chairman Getman suggested that the regulations not be adopted until the end of the process. Preliminary approvals could be done at each step, but the formal adoption would wait until the end so that changes to the regulations would not need to be made later, if another regulation would affect the already approved regulations. Both Commissioners Deaver and Scott agreed.

Commissioner Deaver noted that he would like to see an understandable video for local government officials to use as a guide when the process is complete.

Chairman Getman moved that the Commission adopt the regulation calendar for the year 2000. Commissioner Deaver seconded the motion. There being no opposition, the motion carried.

Item #8. Request from the Los Angeles Ethics Commission for Reconsideration of the FPPC's *Fontana* Opinion and/or Lobbying Rules Concerning the Reporting Obligations of Secession Groups in Los Angeles.

Assistant General Counsel Luisa Menchaca presented this request, explaining that various secession groups have raised and spent money in support of a movement to separate San Fernando Valley from the City of Los Angeles. The process involves circulating petitions, obtaining approval from the Los Angeles Local Agency Formation Commission ("LAFCO"), and submitting the matter before the voters in the form of a ballot measure. The LAFCO process requires expenditures for the purpose of circulating petitions and initiation of studies and proposals. There was also a public relations campaign targeting voters and the community at large.

Ms. Menchaca noted that currently the secession groups have no campaign reporting obligations because LAFCO has not approved the proposal, and that expenditures made to lobby LAFCO are not reportable. Ms. Menchaca reported that the Commission, in 1976, issued the *Fontana* Opinion, holding that the secession groups did not have reporting obligations until the issue became a ballot measure.

Ms. Menchaca explained that the Los Angeles Ethics Commission was requesting this reconsideration in order to ensure disclosure, and she noted that it might include recommending amendments to the Political Reform Act.

Ms. Menchaca reported that the L.A. Ethics Commission's argument is that the secession group's activity for this process is not different from a group supporting an initiative. The staff suggests that the issue of the relevance of how the process was initiated be considered, and that the issue of whether the Commission should confine itself to just looking at expenditures pertaining to petition circulation be discussed further. She noted that the PRA regulates activities intended to influence the voters, not a legislative body. Consideration should be given to how the courts might view an action by the Commission. Reporting of these expenditures as lobbying expenditures should also be considered. The ultimate issue, she explained, is in determining whether a payment is made for political purposes.

Commissioner Scott noted that she is a resident of the San Fernando Valley but did not believe that she should recuse herself on this issue because the only issues being discussed involve the propriety of disclosure and the application of the Political Reform Act.

LeeAnn Pelham, Deputy Director of the City of Los Angeles Ethics Commission, presented the two issues that the Ethics Commission would like to have addressed. The first issue involved the kind of public disclosure which should apply to the campaign-like activities of those circulating petitions to initiate a LAFCO process; and the second issue involved how to ensure that the public has information about the lobbying efforts aimed at LAFCO.

Ms. Pelham explained that the Ethics Commission believes that monies raised and spent to qualify a petition for a LAFCO proposal should be treated the same as monies raised and spent to qualify an initiative. She stated that the *Fontana* Opinion created a loophole which allows hundreds of thousands of dollars to be spent to affect the political process on a significant issue without public disclosure about what interests are propelling that process. She noted that their request is not retroactive, but rather to illustrate the need to correct the loophole inadvertently created by the *Fontana* Opinion so that future similar situations will have public disclosure.

Ms. Pelham asked the Commissioners to consider that the reorganization of the city is a fundamental issue of governance, has long term consequences, requires the expenditure of numerous public resources, and is a lengthy, substantive, factual and very political process.

Ms. Pelham compared the petition process for a secession initiative with the initiative process and pointed out the similarities. She noted that even though the secession proposal may not reach the ballot if LAFCO disapproves it, that should not distinguish it from an initiative which also may never reach the ballot. Ms. Pelham added that the *Fontana* Opinion acknowledged that there are campaign-like activities that do occur before a proposal is placed on the ballot that are reportable. The petition effort is also aimed at the voters in anticipation of the measure being placed on the ballot.

Ms. Pelham further noted that they agreed with staff that LAFCO should not be construed as a state agency. But she also pointed out that LAFCO is neither a county or city agency and did not fall under those disclosure laws. Ms. Pelham pointed out that they were not requesting that the Political Reform Act be amended, but rather that the state amend the Cortese-Knox Act to

provide for a lobbying disclosure program for LAFCOs throughout the state. She noted that the City Council of Los Angeles is looking towards changing the state law in the Cortese-Knox Act to incorporate a lobby disclosure program and has included it as a part of its state legislative program for this year.

Ms. Pelham explained that communications geared toward the voters at the stage of getting signatures on the petition to initiate the LAFCO process should be subject to campaign disclosure. She added that when a person is hired to influence the decisions of LAFCO, it should be subject to lobbying disclosure.

Jeff Brain, President of Valley Voters Organized Toward Empowerment ("Valley VOTE"), discussed his group and gave some background on its efforts on this secession issue. He noted that the City of Los Angeles' officials are steadfastly against the secession effort. Mr. Brain pointed out that the petitions presented to LAFCO are required as a part of the LAFCO process, and contains only preliminary proposed boundaries and does not contain any terms of the proposal. He noted that LAFCO determines all of the conditions and terms of the reorganization. Therefore, this group's efforts simply initiate a process, and do not create a proposal.

Mr. Brain charged that some opponents to their efforts have violated the constitutional rights of people who support their secession efforts, and that some Los Angeles city officials have stated that they will not cooperate with the LAFCO study. He stated that some supporters of the secession effort fear retribution by the City of Los Angeles. Mr. Brain pointed out that prior to the start of the petition drive he met with the City of Los Angeles' staff, provided them with a copy of the *Fontana* Opinion, and was told that there would be no problem. He stated that he thought that the only reason the issue has been raised now was an attempt to force them to use up their funding.

Mr. Brain contended that there is a real and logical difference between an initiative that goes directly to the voters and an effort, such as the LAFCO process, where a petition initiates the process. He also noted that the City of Los Angeles will not hire a consultant for the study until February of 2000, and that the study will take two to four years thereafter, so the next election is very far removed from the process of the petition drive. He asked the Commission not to alter or back away from the *Fontana* Opinion.

Mr. Brain added that he is not opposed to putting lobbying reporting requirements on LAFCO. However, he noted, it should also apply to lobbying efforts by the City of Los Angeles. He provided copies of the petition to the Commissioners.

Commissioner Deaver pointed out that whatever decision the Commission decides on, it should not apply retroactively to Valley VOTE.

Tony Miller, Attorney, encouraged the Commission to find a way to ensure that when large amounts of money are being spent in a petition process, it is disclosed to the public. He stated that the Commission should explore ways to do that, by opinion, regulation, or statute. He also

noted that it is important that it be applied prospectively, and not by changing the rules in the middle of the process.

Chairman Getman adjourned the meeting for a break at 10:50 a.m. The Commission meeting reconvened at 11:05 a.m.

Commissioner Scott noted that some of Mr. Brain's concerns needed to be addressed to the Legislature with regard to the Political Reform Act, and that his concerns should apply to any legislative or administrative activity, whether by initiative or legislation. She pointed out that concerns about retribution and retaliation need to be addressed in another forum, and that while retribution and retaliation were inappropriate, the Commission must still enforce disclosure.

Commissioner Scott also noted that LAFCO does not have sole discretion and that as the studies proceed, there will be a lot of input into that decision making. She added that both voters and LAFCO may be being influenced. She noted that if there is later disclosure, recapture would be in a lump sum and questioned the value of that information. Commissioner Scott supported a prospective disclosure approach to the issue, noting that when huge amounts of money are spent with regard to the political process, there should be disclosure.

Mr. Brain stated that Valley VOTE believes in disclosure, but noted that during its petition drive people were told that, based on the law, disclosure was not necessary. He added that most of its contributors are fearful of retribution and do not want their names disclosed.

Commissioner Deaver noted that people who take a position in our society should be willing to bear the consequences of that position. He added that people who spend money for any political purpose should have to disclose those contributions to the public. However, he noted that recapture was not going to work, and suggested that contribution thresholds be established. He also suggested that the Legislature should study this issue also. Commissioner Deaver added that the lobbying aspects of the issue should also be disclosed, with a threshold.

Chairman Getman agreed that it seemed that there should be disclosure in the Los Angeles secession issue, but noted that the LAFCO process is very different from other petition drives. She was concerned that creating reporting requirements for petition drives might not be within the boundaries of the authority of the FPPC. She agreed that recapturing was not a good idea.

Commissioner Deaver noted that it is extremely difficult to get people involved in the political process, and that adding more regulations to the process could make it even harder.

Commissioner Scott requested that staff develop proposals outlining different options for disclosure, making sure that it is legal and within the FPPC's jurisdiction.

Chairman Getman added that it should include the possible ramifications related to other types of petition drives, reorganizations or activities.

Assistant General Counsel Luisa Menchaca requested that the Commission provide guidance regarding how narrow this issue should be explored, noting that it would be difficult to look at just the LAFCO related issues, and suggested that the implications outside of the LAFCO issue also be included.

Commissioner Scott answered that staff should use whatever tools they feel they need to be able to respond to the Commission on this issue of disclosure.

Commissioner Deaver suggested that school district reorganizations also be explored.

Chairman Getman suggested that all options and their implications should be explored.

Commissioner Scott requested that a separate memo be developed outlining when it would be effective retroactively and when it would be effective on future issues only.

Commissioner Deaver questioned the constitutionality of trying to do it retroactively.

Commissioner Scott pointed out that the issue may not be brought to a vote for years, and that there should be some way to require disclosure during the period between the passage of new rules and the time of the vote.

Ms. Pelham responded that they are not advocating disclosure on the petition drive which has already been completed. She added that if anyone is raising and spending money to communicate with voters, disclosure could be a goal.

Commissioner Scott asked staff to get any documentation to them as early as possible.

Commissioner Deaver moved that staff look at the issue in greater depth and bring it back to the Commission in January. Chairman Getman seconded the motion. There being no opposition, the motion carried.

Item #9. Adoption of policy goals for the Commission in 1999-2000.

Commissioner Scott questioned whether Robert Leidigh's suggestion to make as part of the FPPC's legislative package a recommendation to the Legislature to amend Government Code Section 85320(c) should be part of the legislative package or whether Mr. Leidigh should be advised to go to the Legislature to request the amendment.

Chairman Getman noted that the Commission is already on record with the Legislature supporting a review of the statute.

Robert Leidigh, attorney representing Frederic and Kevin Lin, Martin Inderbitzen, Ted Fairfield and James Tong, requested that the Commission include this in its legislative package, to make sure that it gets introduced to the Legislature. He reminded the Commission that the last time it

was discussed it fell at the end of the legislative session, too late to take action. Mr. Leidigh added that he believed it was the Commission's responsibility to go to the Legislature to request the amendment.

Commissioner Scott responded that she was uncomfortable with being the negotiator of the measure. She recommended that the Commission stand on the sidelines to provide input, but not take a lead role in requesting an amendment.

Chairman Getman noted that the Commission provides the Legislature with a package each year called "technical cleanup" and includes those areas of the PRA where the drafting of amendments passed in recent years have caused practical problems that were unanticipated. She suggested that this be included as part of the technical cleanup package.

Commissioner Scott agreed.

Commissioner Deaver did not agree, noting that this affects more than just Mr. Leidigh's clients.

Chairman Getman asked staff to include it in the December cleanup package so that it could be discussed further at that time.

Items #10, #11, and #12.

Chairman Getman requested that the Litigation Report, Legislative Report, and Executive Director's Report be submitted.

The meeting was adjourned at 11:55 a.m.

Dated: November 10, 1999

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman